December 8, 1980 for reasons set out in the judgment, the gist of which is that appellant had not satisfied the court that the learned judge had exercised his discretion wrongly.

Mr. Sethu for the applicant submits that this is a final judgment the subject-matter being above $25,000. He argues that there can be more than one final order and that an execution order is not interlocutory but machinery to get a final judgment into effect, which if we understand him aright makes it a final order as well. He argues that since this is an application for leave to appeal made under section 74(1)(a) of the Courts of Judicature Act, then an appeal lies as of right and the Federal Court has no discretion to refuse leave of appeal, citing as his authority the Privy Council decision in *Lopez* v. *Valliappa Chettiar*.[1]

Mr. Alex Khoo for the respondent confesses to uncertainty as to whether the order is final or interlocutory this being an appeal against the order of a judge giving leave to execute. He suggests that we would apply the test which was applied in *Bozson* v. *Altrincham U.D.C.*[2] at page 548 where Lord Alverstone C.J. said that the test to be applied is:

"....Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

The Bozson test has of course been the test which has been accepted by our courts. He submits that the better view would be that this order is interlocutory though even then he seems to think it comes within neither category.

We were referred to the Court of Appeal decision in *W.T. Lamb & Sons* v. *Rider, Same and Same*[3] wherein Scott L.J. (at page 407) said,

"....the right to sue on a judgment has always been regarded as a matter quite distinct from the right to issue execution under it and that the two conceptions have been the subject of different treatment. Execution is essentially a matter of procedure — machinery which the court can, subject to the rules from time to time in force, operate for the purpose of enforcing its judgments or orders."

We are of the view that the order by the learned trial judge granting leave to issue execution under Order 42 rule 23 of the Rules of the High Court, 1957 is not a final order and should be regarded for all intents and purposes as an interlocutory one. (For examples of interlocutory orders, a useful list may be found on pages 745 and 746 of the Supreme Court Practice, 1967 Vol. 1). It would therefore fall under section 74(1)(b) of the Courts of Judicature Act so that in order to obtain leave, the applicant will have to satisfy us that this is an order which is a fit one for appeal. Appellant has failed to do so.

This application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Khoo & Sidhu; Peter Loh & Co.*

TIO CHEE HING & ORS. v. GOVERNMENT OF SABAH

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & George Seah J.) May 15 & October 15, 1981]

[Kota Kinabalu — Federal Court Civil Appeal No. 252 of 1979]

Practice and Procedure — Application for leave to appeal to the Yang di-Pertuan Agong — Finding that action is time barred — Final judgment — Courts of Judicature Act, 1964, s. 74(1)(a).

The applicants applied for conditional leave to appeal to the Yang di-Pertuan Agong against the decision of the Federal Court ([1981] 1 M.L.J. 207). The applicants had filed a claim for damages against the Government of Sabah alleging breach of an agreement by the Government of the Colony of North Borneo to lease 2430 acres of land to them. The respondent had applied for the action to be dismissed *inter alia* on the ground that it was statute-barred. The learned trial judge held the claim was statute-barred and he dismissed the claim for damages. The appeal to the Federal Court was dismissed. The applicants thereupon applied for leave to appeal to the Yang di-Pertuan Agong.

Held: as the judgment of the High Court in this case was a final one the application for conditional leave must be allowed on the usual terms.

Cases referred to:-

(1) *Ratnam* v. *Cumarasamy & Anor.* [1962] M.L.J. 330.
(2) *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547.
(3) *Salaman* v. *Warner* [1891] 1 Q.B. 734.
(4) *Tampion* v. *Anderson* [1974] 48 A.L.J.R. 11, 12.
(5) *Salter Rex & Co.* v. *Ghosh* [1971] 2 Q.B. 597, 601.
(6) *Central Securities (Holdings) Bhd.* v. *Haron bin Mohamed Zaid* [1980] 1 M.L.J. 304.

FEDERAL COURT:

R.R. Sethu for the applicant.

Stephen Foo Kiat Shin (State Legal Adviser) for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): The applicants, who were the plaintiffs in the court below are applying for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the whole of the decision of this court given on October 21, 1980 dismissing the applicants' appeal against the order of the High Court.

The applicants had applied for an area of approximately 3280 acres of state land for agricultural purposes in 1960 from the then Government of the Colony of North Borneo. They alleged that an area of about 3300 acres was earmarked for their application which was registered as Lahad Datu Land Application No. 238/60. They were allowed initially to enter into an area of 851 acres, for which title was subsequently issued to them, with certain conditions for development. According to applicants, Government had promised to allow them to enter and occupy another 1312 acres of state land, as a second stage, if they fulfilled the conditions imposed on them under the first stage. They carried out the development of the 851 acres of land in accordance with the conditions imposed and made preparations at great cost to enter the second stage but, in spite of various requests made between 1964 and 1969, the respondent failed to give them the necessary approval. Finally, on March 26, 1971, they were informed that "their application for addi-

tional area" did not have the approval of the Ketua Menteri.

There the matter rested for quite a while. What apparently prompted the applicants to file the writ were the several notices of demand for arrears of quit rent by the Assistant Collector of Land Revenue and threats to auction the land. The last of these demands was made on November 25, 1978.

The respondent had filed a summons in the court below under Order 25 rule 4 to have the action dismissed *inter alia* on the ground that it is time-barred. In reply, the applicants/plaintiffs by affidavit contended that the Limitation Ordinance does not apply because they became aware that they could sue the present State Government only in 1977, and also because the agent of the respondent Government had as late as November 25, 1978 demanded payment of quit rent. The learned judge held that these are not facts which would make the Limitation Ordinance inapplicable to the action.

Accordingly he held that the action was statute-barred and dismissed applicants/plaintiffs' claim with costs, a decision later affirmed by this court.

Commencing with the decision of this court in *Ratnam* v. *Cumarasamy & Anor.*[1] the test applied by Lord Alverstone C.J. in *Bozson* v. *Altrincham Urban District Council,*[2] now known as the Bozson test has been preferred by our courts to that applied in *Salaman* v. *Warner*[3] (the Salaman test). Put briefly the Bozson test is: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then it ought to be treated as a final order, but if it does not, then it is an interlocutory order.

We can envisage nothing which disposes of the rights of the parties with more finality than a finding that an action is time-barred.

In passing we note that Mr. Stephen Foo for the respondent expressed concern about the continuing controversy between proponents of Bozson and Salaman in England, a state of affairs specifically referred to by their Lordships of the Privy Council in *Tampion* v. *Anderson.*[4] In the later decision their Lordships adopted the suggestion of Lord Denning M.R. in *Salter Rex Co.* v. *Ghosh*[5] where he said,

"This question of final or interlocutory is so uncertain that the only thing for practitioners to do is to look up the practice books and see what has been decided on the point. Most orders have now been the subject of decisions."

Mr. Foo thinks that we should look up the precedents to be found in the practice books rather than apply either test.

The same argument was urged before this court in *Central Securities (Holdings) Bhd.* v. *Haron bin Mohamed Zaid*[6] without success.

Since we hold that the judgment of the High Court in the instant case is a final one we have no option but to allow the application for conditional leave on the usual terms.

Costs of and incidental to the application to be costs in the cause.

Application allowed.

Solicitors: *Sethu, Ghazali & Gomez.*

A. RAGUNATHAN v. PENDAKWA RAYA

[F.C. (Raja Azlan Shah Ag. L.P., Salleh Abas & Abdul Hamid F.JJ.) November 2, 1981]

[Kuala Lumpur — Criminal Appeal No. 5 of 1981]

Criminal Law and Procedure — Charge under Public Service Tribunal Act, 1977 — Applicant acquitted in Magistrate's Court — Appeal allowed in High Court — Application to refer questions of law to Federal Court — Ingredients necessary to prove prima facie case — Courts of Judicature Act, 1964, s. 66 — Public Service Tribunal Act, 1977, s. 18(1) — Criminal Procedure Code (F.M.S. Cap. 6), s. 173(b).

Constitutional Law — Public Service — Whether person is public officer — Public Service Tribunal Act, 1977, ss. 2 & 18(1) — Federal Constitution, art. 132.

The applicant had been charged with an offence under section 18(1) of the Public Service Tribunal Act, for making a communication to the press in regard to proceedings of the Tribunal. He was acquitted in the Magistrate's Court but on appeal by the Public Prosecutor, the appellate judge ordered the defence to be called on an amended charge. The applicant thereupon applied to the High Court to refer two questions of law to the Federal Court but his application was refused and he applied to the Federal Court. The questions proposed to be referred were —

(1) What ingredients must the respondent prove to establish a *prima facie* case in a prosecution against a defendant on a charge under section 18(1) of the Public Service Tribunal Act, 1977 read with paragraph 7 of the Schedule to the said Act?

(2) In a prosecution under section 18(1) of the Public Service Tribunal Act, 1977 is it sufficient for the respondent to establish that a defendant is a public officer within the meaning of the said Act by leading evidence to show that he (the defendant) is a member of a trade union consisting of Government servants?

Held: (1) it is not sufficient that the question raised is a question of law. It must be a question of law of public interest;

(2) the proper test for determining whether a question of law raised in the appeal is of public interest would be whether it directly and substantially affects the rights of the parties and if so whether it is an open question in the sense that it is not finally settled by this court or the Privy Council or is not free from difficulty or calls for discussion of alternative views;

(3) the court must consistently decline to receive and answer questions which though they might be questions of law are nevertheless not questions of law of public interest, in the sense that a necessity arises for the determination of the questions having regard to the uncertain or conflicting state of the law on the subject;

(4) in this case the application would be dismissed so that the case can continue in the Magistrate's Court.

Cases referred to:-

(1) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49, 51-52; [1981] 3 W.L.R. 395, 402-403.

(2) *Public Prosecutor* v. *D'Fonseka* [1958] M.L.J. 102.

(3) *Yap Ee Kong* v. *Public Prosecutor* [1981] 1 M.L.J. 144.

(4) *Buckle* v. *Holmes* [1926] 2 K.B. 125.

(5) *Imperial Tobacco Ltd. & Anor.* v. *A.G.* [1980] 2 W.L.R. 466; [1980] 1 All E.R. 866.

(6) *Cecil Rajah* v. *Public Prosecutor* [1981] 1 M.L.J. 147.

FEDERAL COURT.

G. Sri Ram for the applicant.

Mohamed Noor bin Haji Ahmad (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah Ag. L.P. (delivering the judgment of the Court): By the Public Service Tribunal